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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 85/2015* **

Communication submitted by:	S.F.A. (represented by counsel, Niels-Erik Hansen)
Alleged victims:	The author and her minor son, H.H.M.
State party:	Denmark
Date of communication:	22 April 2015 (initial submission)
References:	Working Group's decision under articles 5 and 6 of the Optional Protocol and rules 63 and 69 of the Committee's rules of procedure, transmitted to the State party on 23 April 2015 (not issued in document form)
Date of adoption of decision:	26 February 2018

* Adopted by the Committee at its sixty-ninth session (19 February–9 March 2018).

** The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Naela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Patricia Schulz, Wenyan Song, Aicha Vall Verges.

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Decision on admissibility

1.1 The author of the communication is S.F.A, a Somali national born in 1988. The communication is submitted in her name and on behalf of her son, H.H.M., born in 2013. The author sought asylum in Denmark, her application was rejected and, at the time of submission of the communication, she was awaiting deportation from Denmark to Somalia. She claims that such deportation would constitute a violation by the State party of articles 1, 2 (d), 12, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively. The author is represented by counsel, Niels-Erik Hansen.

1.2 On 23 April 2015, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from expelling the author and her son to Somalia while the communication was under consideration by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure. On 27 April 2015, the Refugee Appeals Board suspended the time limit for the departure of the author and her son from Denmark until further notice in accordance with the Committee's request.

1.3 On 7 July 2016 and 7 September 2017, the Committee denied the State party's requests to lift the interim measures.

Factual background[1]

2.1 The author is an ethnic Somali and a member of the main clan of Shikhal, subclan of Loboge and sub-subclan of Agane. Her family remaining in Somalia consists of parents, two brothers, two paternal uncles and their families, a maternal aunt and two paternal aunts and their children.[2] The author is of the Muslim faith. As a child, she was subjected to female genital mutilation.

2.2 The author's father wanted to marry her forcibly to an older man whom he knew living abroad. Against her family's wishes, she had a relationship with H., whom she had met at school in Buulobarde, which they were both attending when she was about 15 or 16 years old. They had continued to have a secret relationship either at the home of N., the author's friend and neighbour, or in the fields surrounding Buulobarde until 2007, when the author became pregnant to H. and had an abortion with her mother's help. The author's mother told the author's paternal aunt about the pregnancy and abortion. She also suggested that the author should be circumcised again in order to keep her father from finding out about her relationship with H., given that he was still planning to marry her to the man to whom she had been promised as a child. The author accepted her mother's suggestion and was circumcised again one and a half months after the abortion.[3]

[1] The factual background has been reconstructed on the basis of the author's own incomplete account, reports on the author's asylum screening interview of 11 February 2014, her first substantive interview of 23 May 2014 and second substantive interview of 17 June 2014 with the Danish Immigration Service, the decision of the Service of 19 January 2015, the decision of the Refugee Appeals Board of 8 April 2015 and other supporting documents available on file.

[2] Information is taken from the author's asylum screening interview of 11 February 2014. According to the author's substantive interview of 23 May 2014, three of her paternal aunts died in the spring of 2014 as a result of an explosion in connection with local fighting between Al-Shabaab and the Government.

[3] According to the author's second substantive interview of 17 June 2014, she was not circumcised again, but rather "stitched up" by the same woman who had performed female genital mutilation on her when she had been 5 years old.

2.3 One day in March 2008, the author's father had caught her talking to H. in the field after school. He brought her home to her mother and brothers and threatened to kill her with his shotgun as a punishment for having brought shame on the family. The author's paternal aunt, who was present, disclosed to him that the author had had an abortion in the past. The author's brothers then suggested handing her over to Al-Shabaab, in order to "do away with her" because she had committed adultery. The father refused, because he did not trust the group and thought that it would "just flog her and not kill her". The author's mother arranged for her to hide at N.'s home. Later that day, the author was brought to Beledweyne by her maternal aunt, who was visiting Buulobarde on the day the author and H. were caught together, in order to save her. The author left Beledweyne for Ethiopia the following morning.

2.4 In April 2008, she arrived in Libya, where she was imprisoned for two months for having entered the country illegally. She fled with other prisoners from a prison near Benghazi and, on 7 August 2008, arrived by boat in Italy, where she stayed until leaving for Denmark on 15 December 2013. In November 2008, she was granted residence in Italy for three years on humanitarian grounds. That permit was not subsequently renewed. From November 2011, the author remained in Italy illegally but the Italian authorities took no steps to detain or expel her. In August 2013, the documents related to her residence permit were withheld by the Italian authorities and not returned.

2.5 The author is unaware of what became of H. after her departure in 2008. He travelled to Libya in 2009 or 2010, but the author was already in Italy by then. In 2010, they were married in a religious ceremony in Libya, at which she was represented in her absence by children of her maternal aunt. H. entered Italy in December 2010 and was granted residence for three years, starting from 30 December 2011. The author and H. lived together on the street in the town of Foggia from 30 December 2011 until H. died of tuberculosis in May 2012. Shortly before his death, the author became pregnant.[4] The Italian authorities were unaware that the author and H. were married. The author's son, H.H.M., was born in Italy on 28 February 2013. While in Italy, the author met a pastor from Finland, who gave her money to help her to apply for asylum in another country of the European Union.

2.6 The author and her son entered Denmark on 18 December 2013 without valid travel documents. She applied for asylum on the same day. She gave as grounds for seeking asylum her fear of being killed by her family or surrendered to Al-Shabaab, in the event of her return to Somalia, because she had had a relationship with H. out of wedlock and despite her family's disapproval.

2.7 On 19 January 2015, the Danish Immigration Service turned down her asylum application and on 8 April 2015, the Refugee Appeals Board dismissed her appeal against that decision. The Board noted that the author appeared to be a low-profile individual, as she had not been a member of any political or religious associations or organizations or been politically active in any other way. It also noted that her statements on the events alleged to have occurred prior to her arrival in Denmark were

[4] According to the author's substantive interview of 23 May 2014 with the Danish Immigration Service, she was informed that it had been calculated that she must have become pregnant in the same period when H. died. She had confirmed that she had been at an early stage of pregnancy at the time of his death.

vague.[5] The Board referred to the findings of a language analysis test,[6] according to which the author was deemed to have manipulated her language to imitate a dialect spoken in southern Somalia, and observed that, according to the author's Facebook account, she had studied in Hargeysa, in north-western Somalia. The Board also referred to a letter of 6 May 2014 from the Italian authorities, in which they state that the author's name is unknown to them, despite her claim to have held a residence permit in Italy from 2008 to 2011. In the light of the foregoing, the Board concluded that the author had failed to substantiate her claim for asylum. Accordingly, it could not be considered a fact that she had a conflict with her family or with Al-Shabaab. Based on information provided by her, the Board considered to be a fact, however, that she had close family members in her country of origin.

2.8 The author affirms that she has exhausted all domestic remedies and notes that the Board's decision is final and not subject to appeal. She also submits that the communication is not being examined under any other procedure of international investigation or settlement.

Complaint

3.1 The author claims that the State party would breach its obligations under articles 1, 2 (d), 12, 15 and 16 of the Convention by returning her and her son to Somalia.

3.2 She argues that, as a single woman with a small child, she would be exposed to the risk of gender-based violence in Somalia, contrary to article 12 of the Convention.

3.3 With regard to articles 2 and 15, the author argues that the authorities of the State party failed to take into account her rights under the Convention, in spite of her submission before the Refugee Appeals Board that returning her and her son to Somalia would constitute a violation. In that regard, the author refers to the Committee's general recommendations No. 19 (1992) on violence against women and No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. She also claims that her right to equal treatment, as defined in article 1 of the Convention, has been violated.

3.4 With regard to article 16 of the Convention, the author states that she risks being exposed to gender-based violence at the hands of her family or Al-Shabaab if returned to Somalia, because she resisted a forced marriage and had a child with another man despite her family's disapproval of their relationship.

3.5 She also states that the assessment made by the Board of her credibility is far-fetched and that it did not include in its decision any reason for not accepting her statements as facts.

3.6 The author maintains that the kind of language analysis test performed on her, which concluded with a high degree of certainty that she was imitating a dialect spoken in southern Somalia, has been criticized. Similar tests carried out in the United Kingdom of Great Britain and Northern Ireland in cases involving asylum seekers from Somalia, she asserts, have been problematic.

[5] The Board specifically referred to the author's statements regarding her arranged marriage with the man abroad; her meetings with H., including how he always wore a niqab when meeting her at the home of her friend, N.; how she was caught by her father; what her paternal aunt had known when she was caught with H. by her father in March/April 2008; how she was kept in hiding thereafter; her maternal aunt's visit; H.'s stay in their home town after the discovery of the relationship between the two; who had acted as her witnesses when she was married to H. in Libya; her residence permit for Italy; her stay in Italy with H.; her Facebook account in the name of C.B.; and the funding of her journey.

[6] The test was conducted on 30 June 2014. The findings are based on an analysis of 9 examples of phonology and prosody, 6 of morphology and syntax and 11 of vocabulary.

3.7 Lastly, the author states that she had her child on her lap at the time of her interviews with the Danish Immigration Service, which confused her and, accordingly, had an impact on the statements that she gave regarding the grounds for her asylum application. She argues that that constitutes a separate violation of the Convention, because women with small children are disadvantaged compared with men, who are never placed in such distracting and stressful situations.

State party's observations on admissibility and the merits

4.1 On 23 October 2015, the State party submitted its observations on admissibility and the merits of the communication. It recalls the principal facts on which the present communication is based and reiterates the main findings contained in the decision handed down by the Refugee Appeals Board on 8 April 2015.

4.2 The State party provides a comprehensive description of the organization, composition, duties, prerogatives and jurisdiction of the Board and the guarantees for asylum seekers, including legal representation, the presence of an interpreter and the possibility for asylum seekers to make a statement on appeal. It notes that the Board has a comprehensive collection of general background material on the situation in countries from which the State party receives asylum seekers, updated and supplemented on a continual basis from various recognized sources, all of which it takes into consideration when assessing cases.

4.3 The State party recalls that, under the Committee's jurisprudence, the Convention has extraterritorial effect only when the person to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.[7] In that regard, the State party asserts that she has failed to establish a prima facie case for the purpose of the admissibility of her communication under article 4 (2) (c) of the Optional Protocol, because the author has not substantiated sufficiently that she would run such a risk if she were returned to Somalia. The communication should therefore be considered manifestly ill-founded and, consequently, inadmissible.

4.4 Should the Committee find the communication to be admissible and proceed with its consideration of the merits, the State party asserts that the author has not sufficiently established that she would run a real, personal and foreseeable risk of serious forms of gender-based violence if returned to Somalia.

4.5 The State party disagrees with the author's view that the Board's assessment of her credibility seems "far-fetched". In the decision of 8 April 2015, the Board found unanimously that her statement regarding the grounds for her asylum application should be rejected in its entirety because she had been vague about all crucial elements[8] and unable to substantiate the grounds that she put forward for being granted asylum. Contrary to what is claimed by the author, the Board provided a detailed account of why it could not accept her statement as factual.

4.6 The State party further recalls that the Danish Immigration Service had requested language analysis testing of the author prior to the Board hearing on 8 April 2015. The findings of the test, which were included in the Board's assessment of the case, linked the author's linguistic background with a high degree of certainty to north-western Somalia and showed that it was unlikely to be, as the author had insisted, the Hiraan region of Somalia.

[7] See *M.N.N. v. Demark* (CEDAW/C/55/D/33/2011).

[8] The Board found that, among other things, the author had made vague statements about her meetings with H., including whether he had worn a niqab when they had met at the home of N., the author's friend. It also found that the author had made a vague statement about her Facebook account, opened in the name of C.B.

4.7 The State party further asserts that no valid doubts can be raised with regard to the company that conducted the language test, as argued by the author. The issue with regard to the reliance on and criticism of such tests in proceedings involving asylum seekers from Somalia in the United Kingdom was the weight given by the courts to those tests and not the credibility of the company conducting them.

4.8 As to the author's position with regard to how the presence of her child during the substantive interviews had an adverse impact on the statements that she gave, the State party points out that the reports of those interviews were translated by the interpreter, reviewed by the author and then signed. The author stated explicitly that she had no supplementary comments to make on the reports. At no point during those interviews did she express any confusion. The State party adds that the author had the option of requesting a babysitter during the interviews and, therefore, was not obliged to have her child accompany her.

4.9 With regard to the author's contention that the above circumstances should be considered a separate violation of the Convention, because women with small children are disadvantaged compared with men, who are never placed in such distracting and stressful situations, the State party observes that that submission has not been further substantiated and that no reference has been made to the specific provisions of the Convention that the author deems to have been violated.

4.10 As a result, the State party agrees with the Board's decision of 8 April 2015, which was taken after a thorough assessment of the author's credibility, the background information available on Somalia and the specific circumstances of the case at hand. After analysis of those factors, the Board did not establish the risk of persecution or abuse and no grounds for asylum were found.

4.11 With regard to the author's claim that the Board failed to consider whether she risked exposure to gender-based violence if returned to Somalia, the State party submits that, for the reasons explained in paragraph 4.10, the author is not found to be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence or abuse, including honour killing, by her family. It observes in this respect that the fact that the author was subjected to female genital mutilation prior to her departure from Somalia does not independently justify granting asylum, nor can the circumstance that she is a woman with a child independently lead to an alternative assessment of the risk of future gender-based violence.

4.12 Moreover, the State party finds that it cannot be considered a fact that the author would be a single woman with no social network upon her return to her country of origin, since, as she stated several times, including at the asylum screening interview on 11 February 2014 and at the substantive interview on 23 May 2014, her brothers and parents still live in Somalia.

4.13 The State party further observes that the general situation in Somalia, including that of women, is not such that all returnees risk facing abuse falling within the meaning of section 7 (2) of the Aliens Act.[9] It refers to a publication by the Swedish Migration Agency,[10] in which it is reported that the only part of Somalia not under Government control is southern Somalia (controlled by Al-Shabaab), to the fact that a language analysis test indicated with a high degree of certainty that the author's linguistic background was linked to the north-west of the country and that, according

[9] In this respect, the State party submits that the Board took into consideration in its decision of 8 April 2015 the information contained in: Office of the United Nations High Commissioner for Refugees, "Position on returns to southern and central Somalia" (June 2014).

[10] Sweden, Swedish Migration Agency, *Somalia — Territorial Influence of Various Players* (Stockholm, 23 March 2015).

to the author's Facebook account, she studied in Hargeysa, in north-western Somalia (see paras. 2.7, 3.6 and 4.6).

4.14 Against that background, the State party finds that the author would not be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence or abuse by her family, the local community or others, including Al-Shabaab, upon her return to Somalia.

4.15 With regard to references to the Convention, the State party submits that the fact that the Board made no explicit reference to the Convention in its decision of 8 April 2015 in no way means that it failed to take the Convention into account, as the latter, along with other international human rights treaties, forms an integral part of its assessment of asylum cases.

4.16 The State party concludes that the Board, a collegial body of a quasi-judicial nature, thoroughly assessed the author's credibility, the background information available and the author's specific circumstances and found that she had failed to render it probable, should she and her son be returned to Somalia, that they would risk persecution or abuse justifying the granting of asylum. It adds that her communication has not brought to light any further information to substantiate her claim or that would justify granting asylum. The communication merely reflects her disagreement with the Board's assessment of her credibility. She has failed to identify any irregularity in the decision-making process or any risk factors that the Board has failed to take properly into account. In fact, she is trying to use the Committee as an appellate body to have the factual circumstances submitted in support of her application for asylum reassessed. The State party submits that the Committee must give considerable weight to the facts found by the Board, which is better placed to assess the factual circumstances of the author's case. There is, in the view of the State party, no basis for doubting, let alone setting aside, the Board's assessment, according to which the author has failed to establish that there are substantial grounds for believing that she and her son would risk being subjected to persecution or asylum-related abuse if returned to Somalia. Returning them, therefore, would not constitute a breach of the Convention.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 29 February 2016, the author submitted her comments on the State party's observations on admissibility and the merits.

5.2 The author notes that the Refugee Appeals Board has reopened several cases concerning single refugee women from Somalia [11] and asked the Committee to suspend consideration of the respective communications, because it wished to reconsider its denial of asylum in those cases in the light of recent case law of the European Court of Human Rights.[12] The authorities have not, however, reopened the author's case and she believes that the reason could be that the Government explicitly mentioned her communication during a first reading in the parliament of bill No. L97 as an example of a communication that should never have been registered with the Committee.[13] She therefore fears that her right to a fair hearing could be infringed and that the State party's observations are bound to be biased.

[11] Reference is made to communication No. 93/2015, *K.I.A. v. Denmark*, discontinued on 23 November 2017.

[12] Reference is made to the Court's judgment in *R.H. v. Sweden* (application No. 4601/14) of 10 September 2015.

[13] The author provides no further information on the contents and/or subject matter of the bill in question.

5.3 The author states that, although ratified by the State party, the Convention has not been incorporated into Danish law. Moreover, the Board's case law indicates that the national authorities do not consider the decisions of the Committee legally binding. The author also claims that the Board's decisions never explicitly mention provisions of the Convention and that, as a result, it cannot be ascertained whether the Board has taken into consideration the relevant provisions of the Convention. Even though her counsel has explicitly invoked, orally and in writing, the State party's obligations under the Convention before the Board, the latter's decision of 8 April 2015 makes no mention of the Convention. The same is true of the decision of the Danish Immigration Service.

5.4 With regard to the admissibility of her communication, the author argues that it is closely linked to the merits and that, as a single woman who is being deported to a country that has not even signed the Convention and in the light of all the background information confirming her fears about the possible consequences of her being returned with her son to Somalia, she has established a prima facie case under articles 1, 2, 12 and 15 of the Convention.

5.5 With regard to the merits, the author accepts that she did not provide new information in the two weeks that passed between the Board's decision of 8 April 2015 and the submission of her communication to the Committee on 22 April 2015. The author further submits that the Board's decision was not unanimous. [14] Furthermore, contrary to the assertion that the Board always takes into account the State party's international obligations when making decisions in asylum cases, regardless of whether that is expressly stated in the decision, the author argues that there are no examples of the Board stating expressly that it has taken the Convention into account. Moreover, the Convention is not mentioned on a web page run by the State party's asylum authorities, which contains a list of international conventions that are considered relevant to the asylum process and applications for residence permits.

5.6 The author further argues that the Board should have applied the principle of the benefit of the doubt[15] in her case. Moreover, if she and her son were returned to Somalia, she would have no protection and, even if Al-Shabaab is not currently in control of her home town, it continues to exert great influence. With reference to the case law of the European Court of Human Rights, she argues that the authorities of the State party should have taken into account the situation of single women without male protection. As a single woman, she is thus at greater risk of being subjected to gender-specific violence, without any possibility of protection from the Somali authorities. Lastly, she affirms that the risk of gender-based violence for her is real, personal and foreseeable.

State party's additional observations

6.1 On 15 November 2016, the State party submitted its additional observations.

6.2 As to the author's claim that, as a single woman with no means of protection, she fears gender-specific violence and that all relevant information from Somalia appears to indicate that her fear is justified by the situation on the ground (see para. 5.4), the State party recalls that the Refugee Appeals Board could not accept as factual the

[14] According to the English translation of the Board's decision of 8 April 2015, provided by the State party, the said decision was adopted unanimously.

[15] Reference is made to section III of the Office of the United Nations High Commissioner for Refugees Guidelines on International Protection of 7 May 2002.

author's account of her grounds for seeking asylum.[16] It refers to its prior observations of 23 October 2015, which provide a detailed account of the Board's assessment of the author's credibility (see paras. 4.5–4.10). The State party therefore agrees with the Board's finding that the author has not rendered probable that, should she and her son be returned to Somalia, she would face a conflict with her family or Al-Shabaab.

6.3 The State party refers to the judgment delivered by the European Court of Human Rights concerning a Somali woman, in which the Court stated that:

> It may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman or degrading treatment under article 3 of the Convention.[17]

6.4 The State party observes that the fact that the Board has reopened cases on the basis of the above-mentioned judgment in order to assess the social network in Somalia of the asylum seekers in question indicates that the Board makes a concrete and individual assessment of the circumstances of each asylum seeker. The author's situation, however, is not comparable with that of the complainant in *R.H. v. Sweden* or with that of the individuals in any of the cases reopened by the Board. Because the Board could not accept the author's conflict with her family as a fact, it relied on its finding that the author cannot be deemed to be a single woman with no male network if returned to her country of origin, given that, as she stated throughout the asylum proceedings, she has brothers and parents still living in Somalia.

6.5 As to the author's argument that the State party's observations on her case are bound to be biased, given that her case was used as an example of a communication that should have never been registered by the Committee (see paras. 5.1–5.2), the State party stands by that position, given that the author has not substantiated her claim that there are substantial grounds for believing that returning her and her son to Somalia would constitute a violation of the Convention, including of article 2 (d). The State party adds that the Board is an independent, quasi-judicial body, and that the Government cannot issue directions to it on the decisions to be made in individual cases. Furthermore, the Board did not provide details on the nature of the cases complained of for the purpose of putting before the parliament bill No. L97, which was introduced by the Ministry of Justice on 16 December 2015. Against that background, the State party considers that the author's alleged fear of not receiving a fair hearing is not substantiated.

6.6 With regard to the general situation in Somalia, including that of women, the State party relies on the Board's finding that the situation is not such that all returnees risk abuse falling within the meaning of section 7 (2) of the Aliens Act. The Board referred in this respect to the above-cited judgment in *R.H. v. Sweden* and to recent background information,[18] according to which forces of the African Union Mission in Somalia (AMISOM) and the Somali military are present in the Hiraan region.

6.7 With respect to the author's argument that the Convention was not mentioned in the national-level proceedings, the State party stresses that, although the Convention is not explicitly referred to in the vast majority of the Board's decisions, the State party is bound by underlying international conventions, from which national protection emanates. By way of illustration, the State party refers to the explanatory

[16] Namely, the author's conflict with her family, which started when her family tried to make her accept a forced marriage with an unknown man prior to her departure, the circumstance that she has had a relationship and a child with a man who was not accepted by her family and the antagonism between the author and Al-Shabaab caused by her conflict with her family.

[17] *R.H. v. Sweden* (application No. 4601/14), para. 70.

[18] United Kingdom of Great Britain and Northern Ireland, Home Office, "Country information and guidance south and central Somalia: fear of Al-Shabaab" (London, March 2016).

note to the bill amending the Aliens Act, concerning section 7 (2), which provides that residence permits should be issued to aliens (other than those falling under the 1951 Convention relating to the Status of Refugees) who have a right to protection under those conventions to which Denmark has acceded. It is further explained in the note that section 7 (2) is drafted in accordance with article 3 of the European Convention for the Protection of Human Rights Fundamental Freedoms and its Protocol No. 6, as well as article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Board obviously also undertakes, as part of its non-refoulement analysis, an assessment of the possible discrimination against women to which the asylum seekers would be exposed in the event of return, and any assessment under section 7 of the Act comprises the risk of gender-specific abuse.

6.8 In conclusion, the State party reiterates its opinion that the author failed to establish a prima facie case for the purpose of admissibility of her communication, which is manifestly ill-founded. Should the Committee find the communication admissible, the State party submits that it has not been established that there are substantial grounds for believing that it would constitute a violation of the Convention to return the author and her son to Somalia. Lastly, the Government wishes to draw attention to the statistics on the case law of the Danish immigration authorities, which show, among other things, the recognition rates for asylum claims from the 10 largest national groups of asylum seekers decided by the Board between 2013 and 2015.

Author's comments on the State party's additional observations

7.1 On 26 January 2017, the author submitted her comments on the State party's additional observations. She argues in great detail that the Danish Immigration Service and the Refugee Appeals Board systematically fail to take the Convention into consideration when assessing the requests of female asylum seekers for protection against deportation to countries of origin, even since the Committee clarified its position on the extraterritorial effect of the Convention.[19] The author emphasizes in this regard that the Convention offers a wider scope of protection of women against refoulement than article 3 of the European Convention,[20] which, however, has been incorporated into the law of the State party. She adds that she clearly stated as her grounds for granting asylum her flight from a forced marriage in Somalia and explained the violent consequences should she refuse to obey. She claims, therefore, that the State party is in violation of the Convention, since she has sufficiently substantiated her allegations concerning the risk of gender-specific violence that she faces if returned to Somalia.

7.2 The author further submits that it is unclear from the State party's additional observations (see para. 6.4) which entity reviewed her asylum case in the light of the European Court of Human Rights judgment in *R.H. v. Sweden* and decided not to reopen it, or when that occurred. She submits that the decision in question was definitely not taken by the five Board members who issued the decision of 8 April 2015. Since the Board rejected the grounds for her application for asylum as not credible, it may well have concluded that her family can serve as her male network. Such a decision, however, can be taken only by the Board as an integral part of its non-refoulement analysis. The author recalls in this regard that the male network referred to by the State party comprises the very same persons, her father and brothers, whom she fears will kill her upon her return to Somalia.

[19] Reference is made to *M.N.N. v. Demark* and the Committee's general recommendation No. 32 (2014).

[20] Reference is made to the judgment of the European Court of Human Rights in *L.O. v. France* (application No. 4455/14) of 26 May 2015.

7.3 The author disagrees with the State party's assessment that her situation is not comparable to that of the complainant in *R.H. v. Sweden*, or to the individuals concerned in any of the cases that the Board decided to reopen on the basis of that judgment.[21] She argues, therefore, that the decision not to reopen her case is in violation of article 3 of the European Convention and the Convention.

7.4 The author submits that the security situation in Mogadishu has worsened since the Board's decision of 8 April 2015 and that, as a single mother with a small child, she has no male network to support her on her return to Somalia.

State party's further observations

8.1 On 11 April 2017, the State party submitted that the author's comments on its additional observations did not provide any new and specific information on her case and that, therefore, it relied on the Refugee Appeal Board's decision and on its earlier observations of 23 October 2015 and 15 November 2016. Regarding the author's statement on her grounds for being granted asylum and the alleged conflicts in Somalia, the State party refers to its observations of 23 October 2015. As to the author's submission on the judgment of the European Court of Human Rights in *R.H. v. Sweden*, the State party refers to its observations of 15 November 2016. In addition, the State party observes that it has previously considered the author's argument that her case should be reopened in the light of the aforementioned judgment, and that it also considered the author's family ties, including whether she can be considered a single woman.

8.2 With regard to the review of the author's case (see para. 7.2), the State party clarifies that the Board did not reopen the case, but rather perused her case documents in the light of her reference to the judgment in *R.H. v. Sweden* in the context of the present communication.

8.3 With regard to the author's argument that the absence of any explicit reference to the Convention in the Board's decision of 8 April 2015 means that it failed to consider the Convention's applicability in her case, the State party observes that it has taken into account the submission made by the author's counsel in the present communication and in connection with a number of other communications from individuals who are represented by him. The State party refers in this respect to its observations of 15 November 2016. As to the Board's compliance with international obligations, reference is made to the State party's observations of 23 October 2015 and to the Committee's decision on admissibility in *K.S. v. Denmark*.[22] The State party also refers to the Board's website (www.fln.dk), which contains references to the statutes and legislative provisions relevant to the Board's activities, including reference to the Convention.

8.4 The State party further observes that the general situation in Somalia, including that of women, is not such that all returnees risk abuse falling within the meaning of section 7 (2) of the Aliens Act. In that respect, the State party refers to the judgment of the European Court of Human Rights in *R.H. v. Sweden* and the most recent background information,[23] according to which Buulobarde, in the Hiraan region of Somalia, which the author has stated is her home town, is under the control of AMISOM.

8.5 The State party maintains that the author has failed to establish a prima facie case for the purpose of admissibility under article 4 (2) (c) of the Optional Protocol

[21] Reference is made to communication No. 93/2015, *K.I.A. v. Denmark*.

[22] CEDAW/C/64/D/64/2013, para. 9.7.

[23] Denmark, Danish Immigration Service, and Danish Refugee Council, "South and central Somalia: security situation, Al-Shabaab presence, and target groups" (Copenhagen, March 2017).

and that the communication should therefore be declared inadmissible as manifestly ill-founded. Should the Committee find the communication admissible, the State party further maintains that it has not been established that there are substantial grounds for believing that it would constitute a violation of the Convention to return the author and her son to Somalia.

Issues and proceedings before the Committee concerning admissibility

9.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, it may decide to consider the admissibility of the communication separately from its merits.

9.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes that the author claims to have exhausted domestic remedies and that the State party has not challenged the admissibility of the communication on that ground. The Committee observes that, according to the information available to it, appeals against decisions of the Refugee Appeals Board cannot be lodged before national courts. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the matter.

9.4 The Committee takes note of the State party's claim that the communication is manifestly ill-founded, pursuant to article 4 (2) (c) of the Optional Protocol, owing to the lack of substantiation. The Committee regrets the insufficient quality of the submissions, notwithstanding that the author is represented by an attorney-at-law. In that regard, the Committee recalls the author's claim that she fears being killed by her family or surrendered to Al-Shabaab in the event of her return to Somalia, because she had a relationship with H., her now deceased spouse, despite her family's disapproval. The author has claimed that, if the State party returned her and her son to Somalia, she would be personally exposed to serious forms of gender-based violence, as defined under articles 2, 12, 15 and 16 of the Convention.

9.5 The Committee refers to its general recommendation No. 32 (2014), in which it states that, "under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment" (para. 21). The Committee further refers to its general recommendation No. 19 (1992), in which it recalls that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention", and that such rights include the right to life and the right not to be subject to torture (para. 7). The Committee has further elaborated its interpretation of violence against women as a form of gender discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in which it reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, resulting from the acts or omissions of the State party or its actors, on the one hand, and non-State actors, on the other (para. 21).

9.6 In the case at hand, the Committee observes that there is no claim that the State party has directly violated the provisions of the Convention invoked, but rather that the violation would occur if the State party returned the author and her son to Somalia,

thereby exposing her to the risk of serious forms of gender-based violence at the hands of her family members or Al-Shabaab.

9.7 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,[24] unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[25] In that regard, the Committee notes that, in substance, the author is challenging the manner in which the State party's authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached conclusions. The issue before the Committee is, therefore, whether there was any irregularity in the decision-making process regarding the author's asylum application, to the extent that the State party's authorities failed to properly assess the risk of serious gender-based violence in the event of her return to Somalia.

9.8 The Committee notes that the State party's authorities found that the author's account lacked credibility owing to a number of factual inconsistencies and a lack of substantiation. It also notes the author's explanation that she had her child on her lap at the interviews with the Danish Immigration Service, which confused her and accordingly had an impact on the statements given by her on her grounds for requesting asylum. The Committee notes that all the interview reports throughout the asylum proceedings were reviewed with the author, who was given the opportunity to comment on them, and that she never objected to their content. The Committee further notes the State party's explanation of the possibility for the author to avail herself of childcare services during the interviews (see para. 4.8). The Committee further observes that the limited information provided by the author to the Committee corroborates the determination of the State party's authorities that the author's claims lack substantiation. The Committee further notes that the State party took into consideration the general situation in Somalia.

9.9 The Committee also takes note of the author's claims that the Danish immigration authorities have failed to consider her case from the perspective of the Convention and to mention the Convention in their decision, even though this matter was raised orally and in writing by her counsel during the Refugee Appeals Board hearing. The Committee takes note of the State party's reply that the Convention is a source of law in Denmark and forms an integral part of the assessments made by the Board in asylum cases. The Committee observes that the author's counsel requested the immigration authorities to consider her asylum claim in the light of the Convention, without referring to specific provisions and without substantiating her claims under any specific articles.

9.10 Regarding the author's claim that the fact that she is a single woman constitutes a supplementary factor of risk for her in Somalia, the Committee points out, in the light of the information contained on file, notably "Position on returns to southern and central Somalia", published by the Office of the United Nations High Commissioner for Refugees in June 2014, on which both the State party and the author rely, that the author in fact has both family support and a protection network because she has several close relatives remaining in Somalia, including her parents and siblings, as well as uncles and aunts and their respective families. The Committee therefore considers that this part of the communication has not been sufficiently substantiated for purposes of admissibility, since the author cannot be considered to

[24] See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.

[25] See, for example, *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013).

be a single woman without a protection network if she were returned with her son to her country of origin.

9.11 In the light of the foregoing, and while not underestimating the concerns that may legitimately be expressed with regard to the general human rights situation in Somalia, and in particular that of women, the Committee considers that nothing on file permits it to conclude that the State party's authorities failed to give sufficient consideration to the author's application for asylum, or that the examination of her asylum case otherwise suffered from any procedural defect.

10. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author.